



GUIDELINES FOR LOBBYISTS ON PREPARING FOR RANDOM AUDITS

2007 is the first year lobbyists will be randomly audited by the Tennessee Ethics Commission (the “Commission”). The Commission recognizes that lobbyists need guidance in preparing for a random Commission audit.

Statutory Authority: Comprehensive Government Ethics Reform Act of 2006, at T.C.A. § 3-6-308(a)(7), provides that it is the duty of the Commission to “audit each year the registration statements, amendments to registration statements and reports of at least two percent (2%) of all lobbyists.” The statute goes on to provide:

The attorney general and reporter, or the attorney general's designee, shall attend the random selection proceeding in order to preserve the integrity of the proceeding. Nothing contained within the provisions of this subdivision (a)(7) shall be construed to prevent the commission, upon finding probable cause to believe that an employer or a lobbyist has violated the provisions of this part, from auditing the registration statements, amendments to registration statements and reports of the employer or lobbyist[.]

T.C.A. § 3-6-308(a)(7).

The terms “Audit and investigatory information” are defined as

. . . data pertaining to the nature, source, or amount of employer or lobbyist income, expenditures, receipts, assets, liabilities, net worth or related financial or proprietary information that is received by, recorded by, prepared by, furnished to, or collected by or on behalf of the ethics commission during the course of an audit, investigation or other examination undertaken for the purpose of ensuring compliance with, or imposing civil or criminal sanctions for violation of, the provisions of this part. “Audit and investigatory information” does not include data in a form which cannot, either directly or indirectly, be associated with, or otherwise be used to identify, directly or indirectly, a particular employer or lobbyist.

T.C.A. § 3-6-301(4). The statute does not distinguish between an “audit” and “investigatory information.”

The Commission will identify at least 2% of lobbyists for audit using a software program that is specifically designed for the identification of random samples for audit purposes. In addition, this computerized random sampling will be performed in the presence of a representative of the Office of the Attorney General, as is required under T.C.A. § 3-6-308(a)(7). The time and location will be posted on the Commission’s website.

Audits will be conducted by a Commission employee. The auditor will review any documents that the auditor determines are reasonably needed to validate compliance with the law. Some of these documents will merely be reviewed without the auditor making photocopies

or otherwise taking possession. The auditor may keep photocopies, however, of some documents.

At the conclusion of the audit, a draft of the audit Report will be shared with the lobbyist, and the lobbyist will have an opportunity to respond. Any response by the lobbyist may or may not result in an amendment to the Report. The response, and any amendments which may have resulted therefrom, will be part of the final Report. The final Report is a public record under T.C.A. §10-7-501, *et al.*

NOTE: WHEN A RANDOM AUDIT IS PERFORMED ON A LOBBYIST WITH MULTIPLE EMPLOYERS, THE AUDIT WILL COVER EACH EMPLOYER OF THE LOBBYIST.

A. Lobbyist Registration filed pursuant to T.C.A. § 3-6-302(b)(2): The Commission will verify the following from the lobbyist's registration statement(s):

1. Did the lobbyist timely register pursuant to T.C.A. § 3-6-302(a)(2)?
2. Has the lobbyist made efforts to verify that the employer of the lobbyist registered, and did so in a timely manner? [See T.C.A. § 3-6-306(a)(2)(B)(ii).]
3. Has the lobbyist accurately completed the Lobbyist Registration Form?
4. Has the lobbyist entered into an agreement with regard to his/her lobbying services that contains prohibited terms [e.g., agreements or contracts based on contingent fees, which are prohibited pursuant to T.C.A § 3-6-304(k)]?

Records to be provided by the lobbyist:

A copy of the agreement with the employer which will be reviewed by the auditor. If no written agreement exists, then a memo or other written document from the employer outlining a verbal agreement to provide lobbying services must be provided. In the case of an in-house lobbyist, a copy of their employment contract or job description must be provided.

Other records that may be requested by the Commission in order to verify the information contained on the registration statement and any relevant contracts.

B. In-State Event Form filed pursuant to T.C.A. § 3-6-305(a)(8): The Commission will verify the following information from the In-State Event Form(s):

1. Did the lobbyist timely file with the Commission a copy of the invitation to an in-State event sponsored or co-sponsored by the lobbyist?
2. Was the invitation sent to all members of the Legislature?
3. Was documentation of the per-person cost timely sent to the Commission?
4. Was the per-person cost properly calculated and reported?

Records to be provided by lobbyist:

A copy of the invitation to the event.

Receipts for costs of the event.

The invitation list.

If the per person cost of the event is not based upon a written contract with a 3rd party then the lobbyist may additionally be asked to supply attendance records or, if not available, an approximation of the number of actual attendees, or other appropriate documentation which would reasonably tend to validate the per person cost of the in-State event.

Other records that may be requested by the Commission in order to verify the information contained on the registration statement and any relevant contracts.

C. Employer of Lobbyist Semi-Annual Lobbying Expenditure Report, filed pursuant to T.C.A. § 3-6-303: The Commission does not audit employers of lobbyists unless there is probable cause to do so [see T.C.A § 3-6-308(a)(7)]. Rather, the employer of lobbyist Semi-Annual Lobbying Expenditure Report(s) will be used to verify the following:

1. Lobbyist compensation as defined by T.C.A. § 3-6-301(7).
2. In-State event reporting (see above).

Records to be provided by lobbyist:

Compensation, as defined under T.C.A. § 3-6-301(7), paid to the lobbyist by the employer of the lobbyist. This may be established by check, bank records, tax records and other documents. The auditor will verify that the compensation fits within the range as reported by the employer of the lobbyist.

Expenses directly paid by the lobbyist to third party vendors on behalf of the employers to verify that the expenses fit within the range that was reported by the employer of the lobbyist.

Records mentioned above with regard to in-State events.

Other records that may be requested by the Commission in order to verify the information contained on the registration statement and any relevant contracts.